XI-HC-78

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मामला क्रमांक Cr. A. 85/ सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT: (In Jail)	Pujari Ram, S/o Akalu Ram, Aged about 35 years, R/o Village: Khadgawa, P.S. Khadgawa, District Korea (C.G.)
		- Versus -
	RESPONDENT:	State of Chhattisgarh, Through P.S. Khadgawa, District Korea (C.G.)
	Division Bench: Hon'ble Mr. L.C. Bhadoo and Hon'ble Mr. Dhirendra Mishra, JJ.	
	15-6-2007 Miss Sofia Khan, counsel for the appellant. Mr. U.N.S. Deo, Additional Public Prosecutor for the State/ respondent. Oral judgment dictated on *Dais.* L.C. BHADOO, J. 1. This appeal is directed against the judgment of conviction and order of sentence dated 13th December, 2000 passed by the Additional Sessions Judge, Manendragarh in Sessions Trial No.227/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., for committing	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the murder of Surya Kumari, sentenced him to undergo imprisonment for life and pay a fine of Rs.500/-, in default of payment of fine to further undergo S.I. for six months.

2. Case of the prosecution, in brief, is that on the fateful day i.e. 13-5-2000 at about 8 p.m. Lakhansai along with his wife Surya Kumari was returning from the pond after taking bath, house of the accused was on the way, when they were passing through the street near the house of the accused, they saw that the accused was taking meal, Lakhansai enquired from the accused as to whether he is taking meal, on which the accused became angry and started abusing Lakhansai. Wife of Lakhansai Surya Kumari (since deceased) advised the accused not to abuse. On this, the accused went inside the house and brought Farsa (battle axe). In the meantime, hearing the commotion, neighbour Ashabai @ Munnibai also came out of the house. The accused attacked Surya Kumari with the battle axe on her neck as a result of which she fell down on the ground, blood started oozing out of the neck and she succumbed to the injuries sustained by her, instantaneously.

3. The matter was reported by Lakhansai in Police Station: Khadgawa and based on that, first information report Ex.P-2 was registered. The Investigating Officer left for the scene of occurrence, after giving notice to the Panchas, he prepared inquest Ex.P-5 on the body of Surya

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आदेश पत्रक (पूर्वानुबद्ध)

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	Kumari. He took into possession blood stained soil and plain soil from the place of occurrence under Ex.P-3. Site plan Ex.P-1 was prepared by the Halka Patwari. The body of Surya Kumari was sent for post-mortem examination to Primary Health Centre, Khadgawa, where Dr. R.P. Singh (PW-8) conducted post-mortem and prepared the post-mortem report (Ex.P-7) and opined that cause of death is haemorrhage shock due to cutting of carotid artery and the death was homicidal in nature. The weapon of offence was recovered under Ex.P-9 at the instance of the accused based on the memorandum (Ex.P-8) given by him.	
	4. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Manendragarh, who in turn committed the case to the Sessions Judge, Surguja, from where learned Additional Sessions Judge received the case on transfer for trial.	
	5. The prosecution in order to establish charge against the accused examined eight witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him and stated that he has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing counsel for respective parties, convicted and sentenced the accused as aforementioned.	

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आदेश पत्रक (पूर्वानुबद्ध)

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6.	We have heard Miss Sofia Khan, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor on behalf of the State/respondent.	
7.	At the outset, Miss Sofia Khan has not disputed the homicidal death of Surya Kumari. Moreover, from the ocular evidence of Lakhansai (PW-4) as also the medical evidence of Dr. R.P. Singh (PW-8) and post-mortem report Ex.P-7, on account of the injury sustained by Surya Kumari i.e. cut of carotid artery, due to the attack made by the accused with battle axe, it is established that the death of Surya Kumari was homicidal in nature.	
8	As far as involvement of the accused in the crime in question is concerned, Lakhansai (PW-4), husband of the deceased, was accompanying the deceased at the time of incident. He has categorically stated in his evidence that the accused attacked Surya Kumari with battle axe. In cross-examination of this witness defence has not been able to elicit any circumstance which discredits the evidence of this witness. His presence along with his wife was but natural. Even the evidence of Lakhansai to certain extent is corroborated by the evidence of Ashabai @ Munnibai (PW-1) who resides in the neighbourhood of the accused, who after hearing the commotion came out of her house and saw Surya Kumari in injured condition at the place of occurrence i.e. in	

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	front of the house of the accused. Moreover, the battle axe weapon of offence was recovered at the instance of the accused and same was found stained with blood. Therefore, in view of the above ocular evidence, it is established that the accused was the author of the crime in question.	
9.	Miss Sofia Khan argued that the manner in which the offence was committed i.e. as per the prosecution evidence, there was no animosity between the deceased and the accused. At the spur of the moment some verbal altercation took place between the husband of the deceased and the accused in which Surya Kumari tried to intervene which infuriated the accused and without having any preplan or premeditation on the spur of the moment in a heat of passion the accused took out the battle axe and attacked the deceased. Therefore, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C. Learned counsel relied upon the decision of the Apex Court in the matter of **Tholan vs. State of Tamil Nadu** reported in **(1984) 2 SCC 133**.	
10.	On the other hand, Mr. U.N.S. Deo supported the judgment of the trial Court and argued that single blow is not the determining fact in order to decide intention of the accused. He relied upon the decision of the Apex Court in the matter of **State of Rajasthan v. Dhool Singh** reported in **2004 AIR SCW 24**.	

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आदेश पत्रक (पूर्वानुबद्ध)

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11.	Having heard learned counsel for the parties, we have perused the evidence available on record. As per the prosecution case, at the time of incident, the accused was taking his dinner in the courtyard of his house, at that time the deceased along with her husband were passing through the street in front of the house of the accused, Lakhansai, husband of the deceased, asked the accused as to whether he is taking dinner. It appears that on that count, accused abused to husband of deceased, on which deceased Surya Kumari asked the accused as to why he is abusing Lakhansai, whereupon the accused became angry, he went inside the house, brought the battle axe, attacked the deceased and single blow was caused which proved fatal, as a result, Surya Kumari died instantaneously. In the evidence of Lakhansai it has come that there was no animosity between the parties and everything happened on the spur of the moment. It appears that whatever has been told by Lakhansai could not be tolerated by the accused and he abused Lakhansai in which Surya Kumari intervened, that was also not liked by the accused, he took the battle axe inside the house and attacked Surya Kumari.	
12.	In the similarly situated case in the matter of **Tholan** (supra), when the accused/appellant was asking Palaniammal to move away and abused her. At that stage, Sampat appeared on the scene from his house situated near the house of Palaniammal and asked the accused not to use vulgar	

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language because the ladies were present and asked him to move away from that place. The accused questioned the authority of Sampat to ask him to move away and an altercation ensued between them. Appellant threatened Sampat that he would settle a score with him and immediately thereupon he took out what is described as M.O. 1 Soori knife from his waist and gave one blow to Sampat which landed on his right side of chest. Thereafter, Sampat fell down and appellant ran away. The Apex Court held that "it is equally not in dispute that appellant gave only one blow with a knife. Appellant had no quarrel or dispute with deceased Sampat. It is not shown that deceased Sampat had anything to do with the chit organized by K.G. Rajan. No malice has been alleged to have been entertained by the accused towards deceased Sampat. The incident occurred on the spur of the moment". The Apex Court further held that in the given situation, the accused would be guilty of committing an offence under Section 304 Part-II of the Indian Penal Code.

13. Facts of the present case are similar to that of the above cited case, as there was no earlier dispute between the parties and on the spur of the moment when Surya Kumari tried to intervene, the accused brought out the battle axe and attacked her, but in the present case, severity of the crime was much more in comparison to **Tholan's** case because, the

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	accused attacked the deceased with battle axe, which is a deadly weapon, on her neck i.e. vital part as a result of which carotid artery was cut. Therefore, looking to severity and nature of the weapon of offence, offence under Section 304 Part-I of the I.P.C. is made out against the accused. Looking to the facts and circumstances of the case, we are of the considered opinion that if the accused is sentenced to undergo R.I. for ten years, then the ends of justice would be met. 14. Facts of **Dhool Singh's** case (supra) are distinguishable with the facts of the present case. 15. In the result, the appeal partly succeeds. Conviction and sentence imposed upon the accused/appellant under Section 302 of the I.P.C. are set aside. He is acquitted of that charge, instead thereof, he is convicted under Section 304 Part-I of the I.P.C. and sentenced to undergo R.I. for ten years. The accused shall be entitled for set off of the period spent by him in detention during investigation, trial and pendency of the appeal. **Sd/-** **L.C. BHADOO** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**
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